



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	:	LON/OOBK/OC9/2015/0020
Property	:	94 and 78 Wellesley Court, Maida Vale, London W9 1RQ
Applicant	:	Seaglen Investments Limited
Representative	:	Wallace LLP solicitors for the Applicant
Respondent	:	Chrysostomos Elia Chrysostomou, Niki Elia Chrysostomou, Vassos Archeou and Costas Archeos
Representative	:	Lewis Terrance Rose solicitors for the Respondent
Type of Application	:	S60 and 91 Leasehold Reform, Housing and Urban Development Act 1993 (the Act)
Tribunal Members	:	Tribunal Judge Dutton Mr P Tobin FRICS MCI Arb
Date and Venue of determination	:	4th March 2015 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	4th March 2015

DECISION

DECISION

The Tribunal determines that the sum payable by the Respondent under the provisions of section 60 of the Act shall be, in respect of 78 Wellesley Court, legal fees of £1,420 plus VAT of £284, land registry fees of £27, couriers fees of £14.70 and valuers fees of £1,200 including VAT. This totals £2,945.70. In respect of flat 94 the same sums are found to be payable, save that the land registry fees are £39 giving a total of £2,957.70.

BACKGROUND

1. This application was made by the freeholder, Seaglen Investments Limited (the Applicant), for a determination of the costs payable by the Respondents pursuant to section 60 of the Act.
2. From the documents supplied to us to enable the determination of the costs as a paper case the following chronology can be found. On or about 14th March 2014 initial notices were sent seeking a lease extension for the two flats 78 and 94 Wellesley Court. On or about 22nd May 2014, the Applicant served counter-notices admitting the Respondents entitlement to lease extensions, putting forward counter proposals and attaching a copy of the proposed draft leases. Subsequently, on or about 8th August 2014 the initial notices were withdrawn.
3. The Respondents' liability as to costs are to be found at s60 of the Act and by virtue of s60(3) the Respondents must pay the costs of the Applicant under the provisions of s60(1) down to the time that the Notices were withdrawn.

EVIDENCE

4. In the bundle provided we had copies of the Notices of Claim, the Counter-notices, the application to the Tribunal and the Tribunal's directions and details of the Applicant's costs in respect of both flats. In addition we had a pithy statement of case with some exhibits from the Respondents' solicitors and a somewhat lengthier statement from the Applicant's solicitors, with authorities. There were also copies of emails.
5. Schedules of costs showed that the Applicant's solicitors had charged £3,453.90 for the professional fees and disbursements in respect of flat 78 and £3,465.90 in respect of flat 94. The difference was accounted for in the slighter greater land registry fee of £39 for flat 94.
6. We noted the Respondents' statement of case. The main plank of their argument rested with s60(2) and the relationship of reasonableness to the relevant persons who would be incurring the costs if payable himself. The case of *Dashwood Properties Ltd v Chrisostom-Gouch* was recited, although no copy of the authority was included.
7. It was suggested that the Applicant's costs were exaggerated. It was said that two hours was too long to consider the initial notices, an hour to

draft each new lease was also too long, they being identical, in the main, and that some work could have carried out by a lower grade fee earner. As to the valuer's fees they recited fees charged in 2011 and that the costs appeared to have doubled. They contrasted the time spent by themselves, some 6.5 hours at an hourly rate of £200. They suggested that reasonable fees should be £700 plus VAT for each property for solicitors' costs, plus VAT and disbursements, which were not challenged. As to the valuers fees they suggested a fee of £700 for each plus VAT.

8. In response, the Applicant's submissions confirmed that Wallace LLP had acted for Seaglen for some time, it being part of the Freshwater Group. Specific responses are given to the points raised by the Respondent's solicitors. We noted all that was said. The initial notice suggested a premium of £173,000 for flat 78 and £196,000 for flat 94. Counter proposals totalling £733,771 were submitted. The fees sought were based on the time spent of some 4.5 hours for each property and are set out on schedules before us. The submission explains the need to review each notice and to include a draft lease with the counter-proposal. As to the valuation we were informed that the 2011 valuation was for a possible agreement outside the Act and that the valuations, the fee for which are sought in this application were reasonable and necessary. Mr Shapiro's status was set out, as was his hourly rate. It is noted that he has trimmed his fees to £1,000 for each flat plus VAT. The counter proposals for costs were rejected

FINDINGS

9. We bear in mind the provisions of s60 of the Leasehold Reform, Housing and Urban Development Act 1993.
10. There is no specific challenge to the hourly rates charged by Wallace LLP. We are told that they are the preferred solicitors for the Applicant, which is not disputed. The Applicant is clearly entitled to instruct solicitors used in the past and the hourly rates for Central London, with experienced fee earners are not unusual. The Respondent's solicitors indicate they spent 6.5 hours in total, compared with the 9 hours claimed by the Applicant.
11. The initial notice. The Respondents say that 2 hours is too long to consider the initial notice. We prefer the submission of Wallace LLP on this point. Each notice is specific to each flat. The title appears not to be the same and each would have to be considered separately. We find that one hour for the consideration of each initial notice is not unreasonable
12. The draft lease accompanying the counter-notice. There are two issues. One is that the lease for each counter notice is identical and could have been dealt with by a cheaper fee earner, they being, so it is said, based on precedent. It is also suggested that 20 minutes for obtaining Land Registry copies is too long. We consider there is some merit in this argument. The draft leases contain proposals, which, we might venture to suggest, go beyond the provisions of s57(6), are to all intents and

purposes identical to each other. The Counter notices are also identical save as to the proposed premium. A total of 4 hours is claimed for the preparation of the counter-notice and the draft lease. We find this to be too long and would reduce each claim by one hour. It seems to us, given the contents of both notices, that a period of one hour is sufficient. To achieve this we propose to reduce the drafting time for the lease and the counter-notice to 30 minutes for each. This reduces the cost by £399.50 for each claim. We do not consider the status of the fee earner to be an issue. This is a matter that would need to be dealt with at an appropriate level, which is not a paralegal. The £60 for the land registry entries is allowed. 24 minutes for obtaining the copy documents which are set out in the Applicant's submission is not unreasonable and the use of a paralegal is appropriate.

13. Valuation fees. The comparison of fees suggested in 2011 for different work to those charged in 2014 is unhelpful. The suggested premiums warrant a full valuation and Mr Shapiro's fees, reduced as they are to £1,000 plus VAT for each flat, are, we find, reasonable. His fee note indicates that which was undertaken and the hourly rate does not appear to be challenged. We are not told what fee the Respondents paid.
14. The disbursements, being land registry fees and courier fees are not disputed. There is one further reduction we would make and that is the fee charged on 21st August which is just short of two weeks after the initial notice was withdrawn, the date when the liability for costs stops. Accordingly we reduce the Applicant's costs in both cases by £205 for the work done on 20th May in respect of the lease and by £197.50 in respect of the work done on 21st May preparing the counter-notices. Together with the removal of the fee of £21 on 21st August the total costs payable for legal fees reduces from £1,843.50 to £1,420, with the resultant decrease in VAT to £284. The Respondent admits to spending some 6.5 hours in total. We have reduced the time spent by the Applicant to 7 hours, which we find to be a reasonable comparison. The remaining fees and disbursements stand. Accordingly in respect of flat 78 we find that the total sum payable inclusive of VAT and disbursements is **££2,945.70**. Applying the same reductions to the costs incurred in respect of flat 94 gives a total figure of **£2,957.70 being payable**

Andrew Dutton

4th March 2015

Andrew Dutton - Tribunal Judge

The Relevant Law

60 Costs incurred in connection with new lease to be paid by tenant.

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

(a) any investigation reasonably undertaken of the tenant's right to a new lease;

(b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;

(c) the grant of a new lease under that section;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.

(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.